



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

US EPA RECORDS CENTER REGION 5



AUG 25 2009

REPLY TO THE ATTENTION OF

SR-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Randall V. Griffin
Chief, Regulatory Counsel
Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432

Re: Administrative Order Directing Compliance with Request for Access for South
Dayton Dump and Landfill Remedial Investigation/Feasibility Study

Dear Mr. Griffin:

Enclosed is an Administrative Order ("Order") for access to the Dayton Power and Light (DPL) property located at 1900 Dryden Road in Moraine, Ohio. The U.S. Environmental Protection Agency and its designated representatives require access to the DPL property to conduct work associated with the remedial investigation/feasibility study at the adjacent South Dayton Dump and Landfill site.

The enclosed Order has been modified in response to your comments received by EPA on August 12, 2009, and discussed with DPL during the conference which took place on August 13, 2009. The enclosed Order, as modified, is effective upon receipt. Please provide Notice of Intent to Comply immediately, by electronic mail, with a confirmation copy sent by regular or express mail.

If you have any questions concerning this Administrative Order, please contact Mr. Thomas Nash, Associate Regional Counsel at 312-886-0552, or at nash.thomas@epa.gov.

Sincerely,

Karen Cibulskis
Remedial Project Manager

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

South Dayton Dump & Landfill Site, in
Moraine, Montgomery County, Ohio and
Property located at: 1900 through 2152
Dryden Road in Moraine, Ohio, including:
(i) Montgomery County Parcel
Identification Numbers: (i) J44-04102-0019
(Lot 3061), (ii) J44-04101-003 (Lot 2941),
and (iii) J44-20907-0004 (Lot 1041).

**MODIFIED ADMINISTRATIVE ORDER
DIRECTING COMPLIANCE WITH
REQUEST FOR ACCESS**

U.S. EPA Region 5

Proceeding Under Section 104(e) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9604(e)

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I. JURISDICTION

1. This Administrative Order (“Order”) is issued to Dayton Power and Light Company (hereinafter, “Respondent” or “DP&L”), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300.400 (d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, redelegated to the Regional Administrators of EPA on May 11, 1994, by EPA Delegation No. 14-6, and further delegated to the Director of the Superfund Division, Region 5, EPA, by Regional Delegation 14-6.

II. STATEMENT OF PURPOSE

2. This Order requires Respondent to grant EPA and its authorized representatives entry and access to the property described in Paragraph 3 below located in Moraine, Ohio in Montgomery County, for the purpose of determining the need for, or selection of, a response to a release or threatened release of a hazardous substance, pollutant or contaminant, or otherwise enforcing the provisions of CERCLA, at the South Dayton Dump and Landfill Site. Access for the above purpose includes activities related to a groundwater investigation and the installation, maintenance, and use of permanent monitoring wells at the property described in Paragraph 3

below. This Order further requires Respondent, and/or employees, agents or representatives of Respondent, to refrain from interfering with access to the property described in Paragraph 3 below by EPA and its authorized representatives for the purposes set forth herein.

III. FINDINGS OF FACT

3. Respondent controls and/or owns Property that is described in this Paragraph 3 (hereinafter “Property” or “Respondent’s Property”). The Respondent’s Property that is the subject of this Order is located in Moraine, Ohio, in Montgomery County, across the street from, and about 100 feet east of the South Dayton Dump and Landfill Site (“Site”). The Respondent is listed as the owner of this Property in the Montgomery County, Ohio County Auditor’s Page database (www.mcrealestate.org). The Respondent’s Property is located at 1900 through 2152 Dryden Road in Moraine, Ohio. The Respondent’s Property which is the subject of this Order consists of three specific Lots: Lot 3061, Lot 2941 and Lot 1041, identified further by Montgomery County Parcel Identification Numbers J44-04102-0019 (Lot 3061), J44-04101-003 (Lot 2941), and J44-20907-0004 (Lot 1041). See Attachment A.

4. The South Dayton Dump and Landfill Site (Site) is proposed to be listed on the CERCLA National Priorities List, 40 C.F.R. Part 300, App. B, pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B) (See 69 Fed. Reg. 56970-56976, September 23, 2004). Releases and threatened releases of hazardous substances, pollutants or contaminants have been documented at the Site. The Site is approximately 80 acres in areal extent and is located at 1901 through 2153 Dryden Road, and 2225 and 2335 East River Road in Moraine, Ohio. The Site is adjacent to the floodplain of the Great Miami River. Approximately 25,060 people live within a

4-mile radius of the Site. Six single family residences are located on the northwest side of East River Road and are adjacent to the southeast boundary of the Site. A seventh single family home is located on the southeast side of East River Road and is within 300 feet of the Site. A trailer park with several residences is also situated approximately 300 feet southeast of the Site at the southeast intersection of Dryden Road and East River Road.

5. Disposal of waste materials began at the Site in 1946. Materials dumped at the Site included drummed wastes. Known hazardous substances were disposed at the Site, including drums containing hazardous waste from nearby facilities. Some of the drums contained cleaning solvents (1,1,1-trichloroethane (“TCA”); methyl ethyl ketone (“MEK”); and xylene); cutting oils; paint; Stoddard solvents; and machine-tool, water-based coolants. The Site had previously accepted materials including oils, paint residue, brake fluids, chemicals for cleaning metals, solvents, etc. Large quantities of foundry sand and fly ash were dumped at the Site. Asbestos was dumped at the Site.

6. Witnesses and records indicate that Dayton Power & Light dumped wastes at the Site. Witness testimony indicates that Dayton Power & Light sent hazardous substances to the Site. EPA has determined that Respondent is a potentially responsible party at the Site.

7. On August 10, 2006, U.S. EPA and several potentially responsible parties at the Site entered into an Administrative Settlement Agreement and Order on Consent (“ASAO”) to perform a Remedial Investigation/Feasibility Study for the Site.

8. The Respondents to the ASAO for Remedial Investigation/Feasibility Study in the Matter of the South Dayton Dump and Landfill (CERCLA Docket Number V-W-‘06-C-852) undertook a groundwater investigation at the Site. The ASAO Respondents identified

groundwater contamination at the Site, including groundwater contamination along the eastern boundary of the Site. Groundwater sampling locations with volatile organic compounds (“VOCs”) and metals at concentrations greater than federal Maximum Contaminant Levels (“MCLs”) are shown in Figures 11 and 13 in the Phase I Groundwater Report submitted by Conestoga-Rovers & Associates (CRA). Free-phase product was also encountered at vertical aquifer sampling (“VAS”) location VAS-4.

9. The groundwater contamination along the eastern boundary of the Site is across the street from, and about 100 feet west of Respondent’s Property east of Dryden Road. Groundwater contaminants detected above MCLs within approximately 100 feet of the Respondent’s Property (locations VAS-14, VAS-15 and VAS-21) include trichloroethene (“TCE”), vinyl chloride, cis-1,2-dichloroethene, benzene, arsenic and lead.

10. Preliminary groundwater elevation monitoring and mapping conducted by the ASAOC Respondents in 2008-2009, and by Site property owners from 1998-2002 indicates groundwater flow direction in the vicinity of the Site is variable. During the July 2008 to December 2008 monitoring events, groundwater flow appears to be generally to the west, with occasional components of flow to the northwest and southwest (Figures 2 to 7 in the Phase I Groundwater Report submitted by CRA). During the January 2009 monitoring event, groundwater flow appears to be primarily to the southwest (See the Phase I Groundwater Report submitted by CRA, Figure 8). During the February 2009 monitoring event, groundwater flow appears to be primarily to the southeast (See the Phase I Groundwater Report submitted by CRA, Figure 9).

11. The ASAOC Respondents' groundwater flow maps are similar to 1998-2002 groundwater flow maps submitted by Site property owners (See the Payne Firm Inc., Environmental Data Summaries) which indicate groundwater flow direction at the Site is variable.

12. In 1989, two 10,000-gallon gasoline underground storage tanks ("USTs") were removed west of the Garage Building on the Respondent's Property. Groundwater samples from monitoring wells in the vicinity of the removed USTs contained chemicals above MCLs including benzene (maximum concentration 3,700 ug/L; MCL 5 ug/L), toluene (maximum concentration 11,000 ug/L; MCL 1,000 ug/L), ethylbenzene (maximum 6,100 ug/L; MCL 700 ug/L) and lead (maximum concentration 18 ug/L; MCL action level 15 ug/L) (see Figure 4 and Table 5 in "Site Investigation Performed at Dayton Power and Light Company Transportation Center 1900 Dryden Road, Dayton, Ohio," November 6, 1989). The groundwater samples were not analyzed for TCE, vinyl chloride, cis-1,2-dichloroethylene or arsenic.

13. Boring logs and well construction diagrams submitted with the November 6, 1989, Site Investigation report show soil borings drilled on Respondent's Property in the vicinity of the USTs contained up to 11 feet of fill material including: black-brown sandy clay with glass, oxidized metal fragments and cinders in B-1/MW-1; black-brown sandy clay with glass and oxidized metal fragments in B-2; black sandy gravel with coal ash-like odor and black silty clay with cinders and roofing tar odor in B-3/MW-2; and black sandy clay which appears to be fill material and cinders in B-4/MW-3. The fill material in the borings was not chemically analyzed.

14. Groundwater elevation data collected by Hunter/Keck on behalf of the Respondent shows that on September 12, 1989, groundwater flow beneath the Respondent's Property was to the southwest (See the "Site Investigation Performed at Dayton Power and Light Company Transportation Center 1900 Dryden Road, Dayton, Ohio," November 6, 1989, Figure 4).

15. In 1990, a 20,000 gallon steel UST was removed east of the Service Center building on the Respondent's Property. The UST removal was documented by Bowser-Morner in a March 19, 1990, report "Underground Storage Tank Closure, Dayton Power and Light Company, 1900 Dryden Road, Dayton, Ohio." The UST excavation was cut into twelve to eighteen inches of asphalt and base, six to eighteen inches of fly ash and gravel, and brown sand with fly ash traces to an undetermined depth. The material surrounding the UST appeared to be the same as the construction fill under the parking area. Fly ash content was greatest toward the northeast corner of the excavation.

16. The March 19, 1990, closure report includes data for a sample with the project name "DP&L – Dryden Road" and a sample description "Landfill No. 1". Sample "Landfill No. 1" was a composite soil sample analyzed for polychlorinated biphenyls ("PCBs") and other limited parameters. Sample "Landfill No. 1" contained 3 mg/Kg of PCB-1260.

17. The March 19, 1990 closure report states the Respondent's Property includes an oil process building with three oil storage tanks in the basement and an above-ground storage tank south of the oil storage building with PCB-contaminated oil. The March 19, 1990, closure report includes a figure showing operations areas on the Respondent's Property, including oil

processing, oil storage, PCB-contaminated oil handling and storage, transformer maintenance and ash pits.

18. On January 8, 2001, Respondent submitted a “Remedial Action Plan, DP&L Transportation Center, 1900 Dryden Road, Dayton, Montgomery County, Ohio” (“RAP”) to the Ohio Bureau of Underground Storage Tanks (“BUSTR”). The RAP states Respondent’s Property is characterized by the presence of fill materials, consisting of foundry sand, cinders, metal, clay, etc., beneath the ground surface at a thickness of up to 21 feet.

19. The January 8, 2001, RAP states the latest groundwater measurements indicate subsurface flow is to the southwest across Respondent’s Property.

20. The January 8, 2001, RAP indicates the groundwater treatment system installed at Respondent’s Property in the vicinity of the two 10,000 gallon UST removed from Respondent’s Property was not as effective as expected.

21. On October 18, 2005, LJB, Inc. submitted a “Remedial Action Monitoring Letter Report for the DP&L Transportation Center, Dryden Road, Ohio” to BUSTR. The October 18, 2005, letter states that in 2004, DP&L installed and began operating a biosparge treatment system in three shallow groundwater monitoring wells in the vicinity of the 10,000 gallon UST removal on Respondent’s Property.

22. The October 18, 2005, letter shows benzene concentrations in the groundwater on Respondent’s Property were as high as 45,000 ug/L in 1994. In 2005, one year after the biosparge treatment system began operating, benzene concentrations at Respondent’s Property were as high as 1,200 ug/L. These concentrations of benzene are significantly above the 5 ug/L MCL for benzene. The maximum concentration of ethylbenzene on Respondent’s Property in

2005 was 2,600 ug/L. This concentration of ethylbenzene is above the MCL for ethylbenzene of 700 ug/L. The October 18, 2005, letter includes data for toluene and xylene (detected below MCLs), but does not include analytical data for other chemicals (e.g., other VOCs, semivolatile organic compounds, PCBs/pesticides and metals).

23. Figure 1 in the October 18, 2005, letter includes a flow map. The flow map indicates that on March 28, 2005, groundwater flow on Respondent's property was generally to the south-southwest.

24. Figure 1 in the October 18, 2005, letter shows eight additional USTs on Respondent's Property. The eight USTs were west of the Garage building, north of the two 10,000 gallon USTs removed in 1989. Figure 1 indicates the eight USTs were removed in the 1980s. The contents of the eight USTs are not stated, and there is no discussion of analytical data.

25. Due to variable groundwater flow direction(s) observed in the vicinity of the Site, and based on the fill material and hazardous substances, pollutants or contaminants documented at Respondent's Property, Respondent's Property may, at times, be a source of, or contributing to groundwater contamination along, and downgradient of the eastern boundary of the Site. Similarly, the hazardous substances, pollutants or contaminants documented in the landfilled materials ("Results of the Test Pit/Test Trench Investigation South Dayton Dump and Landfill Site, Moraine, Ohio," Letter Report submitted by CRA, December 11, 2008) and/or groundwater at the Site (See the Phase I Groundwater Report submitted by CRA) may, at times, be migrating off-Site and beneath the Respondent's Property.

26. The off-Site extent of groundwater contamination originating from the Site has not been defined. Similarly, any impacts to Site groundwater originating from Respondent's Property has not been defined. Groundwater flow direction(s) and contaminant fate and transport between the Site and Respondent's Property, including temporal variations are not known.

27. To address the release and/or threatened release of hazardous substances, pollutants or contaminants at and adjacent to the Site (including by-products from degradation), EPA is conducting certain response actions. These actions include performing a remedial investigation/feasibility study ("RI/FS") at the Site.

28. To perform the response actions described above, it will be necessary for employees, agents, contractors, other representatives of EPA and the ASAOC Respondents to enter the Respondent's Property. The activities for which entry is required will involve, at a minimum, conducting vertical aquifer groundwater sampling, installing groundwater monitoring wells, monthly groundwater elevations and two rounds of groundwater sampling at three locations on Respondent's Property (see VAS-26, VAS-27 and VAS-28 in Figure 3 of the "Proposed Investigative Locations on Dayton Power & Light (DP&L) Property," Memorandum from Adam Loney, CRA, to South Dayton Dump & Landfill Site Potentially Responsible Party (PRP) Group, dated March 17, 2009). Entry will also be required to collect monthly groundwater elevation measurements and two rounds of groundwater sampling from existing groundwater monitoring wells on Respondent's Property. Soil samples for chemical analysis may also be collected from the VAS borings on Respondent's Property if the material in a boring does not appear to be undisturbed soil or clean fill. Based on the results of the initial work, additional work may be conducted on Respondent's Property to further characterize and define

the extent of any soil or groundwater contamination detected at the VAS locations or existing monitoring wells.

29. VAS-26 is located on Respondent's Property near the Garage building in the area where the two 10,000 gallon USTs were removed. Groundwater contaminants and potentially contaminated fill material were documented near VAS-26. VAS-26 is located within approximately 175 feet of the Site and may, at times, be upgradient of some Site areas or downgradient or sidegradient of some Site areas depending on groundwater flow. An additional groundwater monitoring well(s) and groundwater elevation monitoring at the VAS-26 location will help refine groundwater flow directions and assist in evaluating contaminant fate and transport between the Site and Respondent's Property.

30. VAS-27 is located on Respondent's Property across the street from and about 150 feet east of the Site. VAS-27 may, at times, be downgradient of the 20,000 gallon UST that was removed and potentially contaminated fill material in the area of the UST removal, and upgradient of some Site areas. Depending on groundwater flow, VAS-27 may, at times, also be downgradient or side-gradient of some Site areas. An additional groundwater monitoring well(s) and groundwater elevation monitoring at the VAS-27 location will help refine groundwater flow directions and assist in evaluating contaminant fate and transport between the Site and Respondent's Property.

31. VAS-28 is located on Respondent's Property across the street from and about 250 feet east of the Site. VAS-28 is located approximately 325 feet from VAS-4 where free product was identified at the Site. An additional groundwater monitoring well(s), groundwater sampling

and groundwater elevation monitoring at the VAS-28 location will help refine groundwater flow directions and contaminant fate and transport between the Site and Respondent's property.

32. Groundwater samples will be collected from all three VAS locations at 5-foot intervals from the water table to a minimum of 100 feet below ground surface. The groundwater samples will be analyzed, at a minimum, for VOCs, and total and dissolved arsenic and lead. The VAS boreholes will be left open pending receipt of the laboratory analytical results. Once the analytical results are received from the laboratory, a monitoring well(s) will be installed at each VAS location with the screen interval set at the depth(s) corresponding to the highest contaminant concentration(s). The new and existing groundwater monitoring wells on Respondent's Property will be surveyed and used to evaluate groundwater elevations. Groundwater samples will be collected from each new well and existing wells on Respondent's Property and analyzed for Target Compound List ("TCL") VOCs, TCL semivolatile organic compounds, TCL pesticides and herbicides, TCL PCBs, Target Analyte List metals (dissolved and total) and monitored natural attenuation parameters.

33. A minimum of two rounds of groundwater samples will be collected from all new and existing groundwater monitoring wells on Respondent's Property. Additional groundwater sampling and groundwater elevation monitoring may be conducted to further evaluate contaminant concentrations in groundwater and groundwater flow direction(s) over time.

34. EPA estimates the duration of the required entry and access will be on an intermittent basis for approximately 1 year. Approximate time frames for specific tasks include approximately 21 days to complete VAS at the VAS-26, VAS-27 and VAS-28 locations, about 15 days to install and develop monitoring wells at the VAS-26, VAS-27 and VAS-28 locations,

about two days to survey new and existing wells on Respondent's Property, about 7 days to conduct each groundwater sampling event, and about 1 day per month to collect groundwater elevations.

35. Despite requests from representatives of EPA, Respondent has refused to provide access for purposes of performing the response activities described above. These requests include letters dated May 1, 2008, December 17, 2008, and March 18, 2009, from Ken Brown, ASAOC Respondents' representative, to Randall Griffin, Respondent's Chief Regulatory Counsel; email dated June 6, 2008, December 21, 2008, December 23, 2008 and March 18, 2009 from Ken Brown, ASAOC Respondents' representative, to Randall Griffin, Respondent's Chief Regulatory Counsel; a March 2, 2009 conference call among ASAOC Respondents' representatives, Respondent's representatives, and EPA representatives including Karen Cibulskis, EPA Remedial Project Manager for the Site; and an April 3, 2009 phone call between Ken Brown, ASAOC Respondents' representative and Randall Griffin, Respondent's Chief Regulatory Counsel. On June 9, 2009, at 9:00 a.m., EPA representatives spoke with representatives of Dayton Power and Light (DPL). The purpose of the call was to request access to DPL property across the street from the South Dayton Dump and Landfill (SDDL) site to collect groundwater data and other information to be used to complete a RI/FS for the site. DPL stated they would not allow EPA access to DPL property to collect data to complete a RI/FS.

36. EPA and the ASAOC Respondents have been ready to perform the work at Respondent's Property since November, 2008, but have been prevented from so doing because of the Respondent's failure to grant access. Respondent's failure to grant access is delaying the

RI/FS for the Site and is delaying EPA's responsibility to evaluate cleanup alternatives and select and implement a cleanup remedy at the Site.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

37. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

38. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

39. All of the substances listed in Paragraphs 5, 8, 9, 15, 16, 17, and 18 above are hazardous substances or pollutants or contaminants within the meaning of Sections 101(14) and 101(23) of CERCLA, 42 U.S.C. §§ 9601(14) and (23).

40. The past and/or present disposal and migration of hazardous substance or pollutant or contaminant at or from the Site constitutes an actual "release" or a threat of such a release into the "environment" within the meaning of Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22), and thus there is a reasonable basis to believe that there may be a release or threat of release within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 104(e)(1).

41. The property owned or controlled by Respondent referred to in Paragraph 3 above is, or is adjacent to property:

a. where a hazardous substance has been generated, stored, treated, disposed of, or transported from; and

- b. from or to which a hazardous substance has been or may have been released; and
- c. where such release is or may be threatened; and
- d. where entry is needed to determine the need for response and/or to identify the appropriate response, or to effectuate a response action within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

42. Entry to property owned or controlled by Respondent by the agents, contractors, or other representatives of the United States is needed for the purposes of determining the need for response, choosing a response action, or otherwise enforcing the provisions of CERCLA, within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

43. Respondent's attempts to condition its grant of access amounts to a denial of access within the meaning of Section 104(e)(5)(A) of CERCLA, 42 U.S.C. § 9604(e)(5)(A), and 40 C.F.R. 300.400(d)(4)(i).

V. ORDER

44. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, Respondent is hereby ordered to provide EPA and its officers, employees, agents, contractors, and other representatives, full and unrestricted access at all reasonable times to the Property for the purpose of conducting response activities, including but not limited to investigating the source of groundwater contamination at the Site, including installation of three (3) VAS borings, groundwater monitoring well installation, groundwater elevation monitoring, groundwater sampling and soil sampling as described in

Paragraphs 28-34 of this Order. EPA has designated the South Dayton Dump ASAO Respondents as its representative solely for the purpose of obtaining access to the Property and conducting response activities.

45. Respondent shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e) and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Property pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.

46. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits. This Order shall apply to and be binding upon Respondent and its successors, heirs and assigns, and each and every agent of Respondent and upon all other persons and entities who are under the direct or indirect control of Respondent, including any and all lessees of Respondent.

47. In the event of any conveyance by Respondent, or Respondent's agents, heirs, successors and assigns, of an interest in the Property, Respondent or Respondent's agents, heirs, successors and assigns shall convey the interest in a manner which insures continued access to the Property by EPA and its representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Property so that the use will not interfere with activities undertaken or to be undertaken by EPA and its representatives. Respondent, or Respondent's agents, heirs, successors and assigns shall notify EPA in writing at least thirty (30) days prior to the conveyance of any interest in the Property, and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

VI. ENFORCEMENT

48. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose a civil penalty on Respondent of up to \$37,500 for each day that Respondent unreasonably fails to comply with this Order, as provided in Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75340-46 (December 11, 2008) to be codified at 40 C.F.R. Part 19.4. In addition, any person who is liable for a release or threat of release of a hazardous substance or pollutant or contaminant and who fails to comply with this Order may be liable for punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Site, and recovery of the costs thereof.

49. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent, or against any entity which is not a party to this Order.

50. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to or take any other administrative or civil action against Respondent or any other parties under CERCLA which relate to this Site or any other site.

51. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

VII. ADMINISTRATIVE RECORD

52. EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of 9:00am and 4:00pm at the EPA offices at:

United States Environmental Protection Agency, Region 5
Superfund Division Records Center
77 W. Jackson Blvd, 7th Floor
Chicago, Illinois 60604-3590

To review the Administrative Record, please contact Thomas C. Nash, Esq. of EPA's Office of Regional Counsel at 312-886-0552 to make an appointment.

VIII. OPPORTUNITY TO CONFER

53. This Order was originally issued on July 16, 2009. Respondent received the Order on July 27, 2009. EPA extended the opportunity to comment and confer for three additional days from the time Respondent acknowledged receipt of the Order (on August 10, 2009). Respondent sent a letter on August 10, 2009, which formally acknowledged receipt of the Order, indicated intent to comment and formally requested a conference to be held by telephone on Thursday, August 13, 2009. On August 12, 2009, EPA received a second letter from Respondent with Respondent's comments on the Order. On August 13, 2009, EPA and Respondent's representatives conferred. This Order has been modified to address some of Respondent's comments. No further opportunity to comment or confer is necessary.

IX. EFFECTIVE DATE; COMPUTATION OF TIME

54. As stated above, EPA has received Respondent's comments, conferred with Respondent, and modified this Order. Because of the immediate need to conduct the activities described above, this Modified Order shall be effective immediately upon its receipt by Respondent or Respondent's designated representative. Respondent is hereby notified that this Modified Order is effective upon receipt. This notification shall be made by EPA by electronic mail, with confirmation made by first class, certified or express mail to Respondent or its legal counsel.

55. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal legal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next business day.

X. NOTICE OF INTENT TO COMPLY

56. On or before the effective date of this Order, Respondent shall notify EPA in writing whether Respondent will comply with the terms of this Order. Respondent's failure to notify EPA of its unconditional intent to fully comply with this Order by the time the Order becomes effective shall be 1) construed as a denial of EPA's request for access, and 2) as of the effective date of the Order, treated as a violation of the Order. Such written notice shall be sent to:

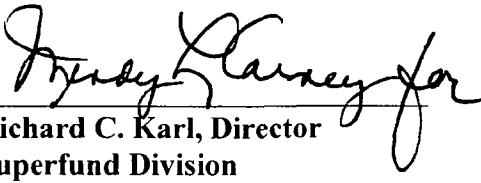
Thomas C. Nash, Esq.
Office of Regional Counsel
United States Environmental Protection Agency
77 W. Jackson Blvd (C-14J)
Chicago, Illinois 60604-3590
Telephone: 312-886-0552

XI. TERMINATION

57. This Order shall remain in effect until Richard C. Karl, Superfund Division Director or his/her designee notifies Respondent in writing that access to the Property is no longer needed.

SO ORDERED.

Date: 8/25/09


Richard C. Karl, Director
Superfund Division

FORM 911-0000 WARRANTY DEED

TUTTLE AND ASSOCIATES, L.L.C. DAYTON, OHIO
TUTTLE AND ASSOCIATES, L.L.C. DAYTON, OHIO

BOOK 1229 PAGE 15

7-82-2428 Know all Men by these Presents

That **VERNON F. GLASER and MARIE J. GLASER, husband and wife,**

in consideration of One Dollar (\$1.00) and other good and valuable considerations

to them

paid by THE DAYTON POWER AND LIGHT COMPANY

the receipt whereof is hereby acknowledged, do hereby Grant, Bargain,

Sell and Convey to the said THE DAYTON POWER AND LIGHT COMPANY

its successors, heirs and assigns forever,
the following described real estate, to-wit:

Situate in the Northwest quarter of Section 7, Town 1, Range 7 NRS., and in the Southwest quarter of Section 8, Town 1, Range 7 NRS., Van Buren Township, Montgomery County, State of Ohio, being part of a tract as described in deed book Volume 806, page 418, and part of Lot Number 5, shown in Plat book "J", page 56, and more fully bounded and described as follows:

Beginning at a point in the center of the East River Road located North fifty-two degrees seven minutes (52° 7') East a distance of two hundred thirty-seven (237) feet from the West line of said Section 7, (said beginning point is on the North line of Schneiders land as described in deed book Volume 988, page 538); thence North thirty-nine degrees twelve minutes (39° 12') West passing a stone at twenty-five (25) feet for a distance of three hundred sixteen and 66/100 (316.66) feet to a corner in the center of the present pavement of the Southward extension of Broadway; thence North four degrees thirty-five minutes (4° 35') East along said centerline for a distance of fourteen hundred thirty-seven (1437) feet to a corner on the South line of the Miami Conservancy District; thence Eastward on a curve to the right with a radius of twelve hundred (1200) feet for a distance of one hundred fifty (150) feet, arc distance; tangent to curve at beginning has a bearing of South eighty-eight degrees two minutes twenty-six seconds (88° 2' 26") East; thence South eighty-two degrees twenty minutes thirteen seconds (82° 20' 13") East, tangent to said curve for a distance of nine hundred eight and 89/100 (908.89) feet to a monument set for the corner of the Miami Conservancy District and the West right-of-way of the C.C. & St. L. Railroad and being a distance of fifty-seven (57) feet from the center of the North bound main track of said railroad; thence South five degrees forty-nine minutes (5° 49') West along said West right-of-way for a distance of eight hundred eighty-one and 13/100 (881.13) feet to a corner; thence continuing along said right-of-way South eighty-four degrees eleven minutes (84° 11') East for a distance of fifteen

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(15) feet to a corner in the center of the East River Road; thence South fifty-four degrees forty-eight minutes (54° 48') West along the center of said East River Road for a distance of four hundred twenty-three and 69/100 (423.59) feet to a point on the West line of said Lot Number 6, witness a stone bearing South twenty-one degrees thirteen minutes (21° 13') East a distance of twenty-five (25) feet; thence along the center of said Road South fifty-two degrees seven minutes (52° 7') West for a distance of six hundred eighty-nine and 70/100 (689.70) feet to the point of beginning, containing twenty-nine and 17/100 (29.17) acres more or less, subject to all legal highways.

The above description follows a survey made by J. E. Finrock, Registered Surveyor, in February 1944 and May 1947.

| | |
|--------------------|---------|
| File No. | 8382 |
| Transferred | 6-26-47 |
| Received | 6-26-47 |
| Time | 2:05 pm |
| Recorded | 6-26-47 |
| Fee | 1.20 |
| GEO. BRUNNENBERGER | |
| County Clerk | |

and all the Estate, Title and Interest of the said

VERNON F. GLASER and MARIE J. GLASER, husband and wife,

either in Law or in Equity of, in and to the said premises; **Together** with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof: **To have and to hold** the same to the only proper use of the said

THE DAYTON POWER AND LIGHT COMPANY

its successors, heirs, and assigns forever.

And the said

VERNON F. GLASER and MARIE J. GLASER, husband and wife,

for themselves and their heirs, executors and administrators, do hereby **Covenant** with the said

THE DAYTON POWER AND LIGHT COMPANY

its successors, heirs, and assigns, that they are the true and lawful owners of the said premises, and have full power to convey the same; and that the title so conveyed is **Clear, Free and Unincumbered**; And Further, That they do **Warrant and will Defend** the same against all claim or claims, of all persons whomsoever; excepting legal highways and restrictions of record and all taxes and assessments due in December 1947 and thereafter. Except also a certain lease of all or part of the premises herein conveyed by the Grantors herein to the City of Oakwood, Ohio, which is recorded in